THE HON'BLE Dr. JUSTICE SHAMEEM AKTHER

C.M.A.No.1365 of 2004

JUDGMENT:

This appeal is filed under Section 173 of the Motor Vehicles Act, 1988 (for short 'the Act'), by the appellant-Insurance company aggrieved by the order dated 11.10.2002 in O.P.No.1522 of 2000 on the file of the Motor Accident Claims Tribunal-cum-III Additional Chief Judge, City Civil Court, Hyderabad (for short 'the Tribunal').

2. Heard the learned counsel for appellant-Insurance Company, the learned counsel for respondents-claimants and perused the record.

3. The learned counsel for the appellant-Insurance Company would contend that the claimants are gratuitous passengers in the offending lorry bearing registration No.CHSD 39311. The Tribunal erroneously fastened the liability against the appellant-insurance company. It is also contended that the grant of compensation of Rs.1,68,000/- is exorbitant. He relied on the decision rendered in *New India Assurance Company Limited v. Asha Rani and others*[1] *case* and ultimately, prayed to set aside the impugned order.

4. The learned counsel for the respondents-claimants would contend that the Tribunal is justified in granting compensation. The decision rendered in *Asharani*'s case has no application to the instant case. The said judgment was rendered in December, 2002, whereas the impugned order was passed in October, 2002. Further, the grant of compensation of Rs.1,68,000/- is not excessive and ultimately, prayed to dismiss the appeal.

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[1] 2003(2) SCC 223

5. In view of the submissions made by both sides counsel, the points that arise for determination are as follows:-

1. Whether the compensation granted by the Tribunal is excessive?
2. Whether the Tribunal erred in fastening the liability against the appellant-insurance company?

6. There is no dispute with regard to the death of the appellant in a motor accident that occurred on 16.03.1998 due to the rash and negligent driving of the driver of tractor bearing registration No.CHSD 39311.

7. POINT No.1:- While dealing with the subject matter of the claim, the Tribunal held that the deceased was 25 years old and took his monthly income as Rs.1,050/-, deducted 1/3rd thereof towards his personal expenses, applied multiplier '18' and awarded Rs.1,51,200/- towards loss of earnings. The Tribunal also granted Rs.15,000/- towards loss of estate, Rs.1,800/ towards funeral expenses. In total, the Tribunal granted compensation of Rs.1,68,000/-, which is just and reasonable. There are no circumstances to interfere with the compensation. Point No.1 is answered accordingly.

8. POINT No.2:- As per the decision rendered in *New India Assurance Company v. Satpalsingh and others*[2], the gratuitous passenger is entitled for compensation from the owner as well as insurer of the offending vehicle jointly and severally. The decision rendered in *Asharani's* case was rendered in December, 2002 and it is prospective in nature. In the instant case, the decision rendered in *Satpal Singh's* case holds good. In view of the same, the Tribunal is

[2] 2000 SAR (Civil) 140

justified in directing the insurer and the owner of the offending vehicle to pay the compensation jointly and severally.

9. In the above circumstances, as there was valid policy of insurance on the date of occurrence of accident under Ex.B1, the appeal is devoid of merit and it is liable to be dismissed. Point No.2 is answered accordingly.

10. In the result, the appeal is dismissed.

The Miscellaneous Petitions, if any, pending shall stand closed.

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Dr. SHAMEEM AKTHER, J

Date: 17.09.2018
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